

DOCKET NO: 265898US3PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
KAN KAWASAKI, ET AL. : EXAMINER: PICO, E.
SERIAL NO: 10/524,670 :
FILED: FEBRUARY 11, 2005 : GROUP ART UNIT: 3654
FOR: ELEVATOR :

PROVISIONAL ELECTION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement stated in the Official Action dated May 18, 2007, Applicants provisionally elect Species B as disclosed in Figures 4-6, and identify Claims 7, 9, and 10 as being readable on the elected Species.

However, Applicants respectfully traverse the outstanding Election of Species Requirements for the following reasons.

First, the outstanding Office Action does not state that "[t]his application contains claims directed to the ... patentably distinct species of the claimed invention...." Furthermore, MPEP §816 states the following:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

The outstanding Election Requirement simply requires to elect a single ultimate species and does not present particular reasons for such a requirement. Hence, Applicants respectfully

submit that in the absence of any annunciated basis, the PTO has not carried its burden of proof stated in MPEP §816.

Further, MPEP §806.04(f) states:

Claims to be restricted to different species must be mutually exclusive.

The outstanding Election Requirement omits any statement or basis for finding the claims "mutually exclusive." Therefore, the PTO has not carried the burden implied by MPEP §806.04(f), and on that basis, Applicants further traverse the Election Requirement.

Furthermore, MPEP §803 states the following:

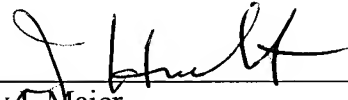
If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Claims 7, 9 and 10 of the present application are all directed to an elevator, and the Office Action acknowledges Claim 7 as generic. Thus, it appears that Claims 7-9 in the present application are part of an overlapping search area. Applicants therefore respectfully submit that there is no undue burden on the Examiner to search all the claims under MPEP §803, and traverse the Election of Species Requirement on the grounds that a search and examination of the entire application would not place a serious burden on the Examiner.

Accordingly, it is respectfully requested that the requirement to elect a single disclosed species be withdrawn, and that a full examination on the merits of each of Claims 7-10 be conducted.

Respectfully submitted,

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